

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN THE MATTER OF THE PETITION OF:

PJSC URALKALI FOR AN ORDER  
PURSUANT TO 28 U.S.C. § 1782 TO  
CONDUCT DISCOVERY FOR USE IN A  
FOREIGN PROCEEDING

No. 2:18-CV-001673 JLR

STIPULATED  
PROTECTIVE ORDER

~~PROPOSED~~

~~PROPOSED~~ PROTECTIVE ORDER

WHEREAS, on October 22, 2018, Applicant PJSC Uralkali (“Applicant”) filed a petition in the above-captioned action (the “Action”) for an order pursuant to 28 U.S.C. § 1782 (the “Petition”) allowing Applicant to serve a subpoena for documents and testimony from Respondent John E. McCaw, Jr. (“Respondent” and together with Applicant, the “Parties” and each a “Party”), for use in an action brought September 27, 2018 by Applicant against Mr. Geoffrey Rowley & Mr. Jason Baker, as administrators of Force India Formula One Team Limited (in administration), Claim No. BL-2018-002138 (High Court of Justice, Business and Property Courts of England & Wales, Business List (Ch)) (the “English Action”);

WHEREAS, on January 23, 2019, this Court issued an order granting Applicant’s Petition;

PROTECTIVE ORDER (~~PROPOSED~~)  
(2:18-CV-001673 JLR) — 1  
4819-5228-9174v.2 0028611-000088

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1 WHEREAS, Applicant is agreeing to enter into this confidentiality agreement which  
2 provides that any discovery materials obtained pursuant to this 28 U.S.C. § 1782 proceeding  
3 may be used or disclosed only in (i) this Action, (ii) the English Action, and (iii) the deposition  
4 of John Idol, in Case No. 18-mc-00459 (ER) (S.D.N.Y.) (the “Idol Deposition”), and  
5 providing other reasonable protections that Respondent may require;

6 WHEREAS, Applicant and Respondent believe that good cause exists for the entry of  
7 this order, which is narrowly tailored to protect Respondent’s non-public, confidential,  
8 personal, proprietary, private, or commercially sensitive information for which special  
9 protection from public disclosure is warranted;

10 By reason of the foregoing, the Court hereby enters the following Protective Order  
11 (hereinafter, “Protective Order”) in this proceeding.

- 12
- 13 1. This Protective Order shall apply to all of Respondent’s documents and information  
14 that are produced or disclosed in any form by Respondent, including in any hard  
15 copy or electronic document, or in testimony given at his deposition, and all  
16 information copied or extracted from any of the above (collectively, “Discovery  
17 Materials”). Applicant, and any other person receiving any Discovery Materials, are  
18 together referred to herein as “Receiving Parties” and each a “Receiving Party.”
  - 19 2. No Discovery Materials may be used or disclosed by any Receiving Party, except in  
20 (i) this Action, (ii) the English Action, and (iii) the Idol Deposition.
  - 21 3. Respondent may designate any Discovery Materials as “Confidential” under the  
22 terms of this Protective Order if Respondent reasonably believes in good faith that  
23 such Discovery Materials contain non-public, confidential, personal, proprietary, or  
24 commercially sensitive information that meets the requirements of Federal Rule of  
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1 Civil Procedure 26(c) for the protections provided in this Protective Order  
2 (“Confidential Discovery Materials”).

3 4. Discovery Materials Respondent wishes to designate as Confidential Discovery  
4 Materials shall be so designated in the following manner:

- 5 a. In the case of documents or other materials (apart from depositions or other  
6 pre-trial testimony): (i) by affixing the legend “Confidential” to each page  
7 containing any Confidential Discovery Materials; or (ii) in the case of  
8 electronically stored information produced in native format, by including  
9 “Confidential” in the file or directory name, or by affixing the legend  
10 “Confidential” to the media containing the Confidential Discovery  
11 Materials.  
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- 13 b. With respect to Discovery Materials that contain Confidential Discovery  
14 Materials produced in electronic form, the same designation shall be affixed  
15 to the medium on which the Confidential Discovery Materials is provided.  
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- 17 c. With respect to deposition transcripts and exhibits thereto that contain  
18 Confidential Discovery Materials, the designation shall be made (1) on the  
19 record at the deposition or (2) within thirty (30) days after the transcript  
20 becomes available to those who have ordered a copy, on written notice of the  
21 “Confidential” designation to all counsel of record for the Parties by: (i)  
22 marking the cover page of the transcript with the legend “Contains  
23 Confidential Information: Subject to Protective Order”; (ii) affixing the  
24 legend “Confidential” to each page containing any Confidential Discovery  
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1 Materials; and (iii) providing copies of all such marked pages, at its own  
2 expense, to the other Party.

3 5. In the event Respondent inadvertently fails to designate Discovery Materials as  
4 "Confidential," such inadvertent failure shall not be deemed or argued to waive  
5 Applicant's right to designate such Discovery Materials "Confidential."

6 a. Respondent may correct the designation by giving supplemental written  
7 notice to Applicant as soon as practicable;

8 b. Within five (5) business days of written notice from Respondent, Applicant  
9 must advise all Receiving Parties that the Discovery Materials are  
10 Confidential Discovery Materials;

11 c. As soon as any Receiving Party becomes aware of the inadvertent failure to  
12 designate the Discovery Materials as Confidential, the Receiving party must  
13 treat the Discovery Materials as though they had been timely designated as  
14 Confidential Discovery Materials under this Protective Order;

15 d. To the extent any Receiving Party is not authorized to receive Confidential  
16 Discovery Materials, Applicant shall undertake in good faith to retrieve all  
17 copies of such Confidential Discovery Materials. If Applicant does not  
18 retrieve all Confidential Discovery Materials, it shall inform Respondent and  
19 fully cooperate with any effort by Respondent to retrieve the Confidential  
20 Discovery Materials.  
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23 6. Upon receiving Discovery Materials designated as "Confidential," Applicant shall  
24 have the right to challenge such designation by applying to the Court, on no less  
25 than five (5) business days' notice, for an order to remove such designation. Before  
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1 making any such application, Applicant and Respondent shall make reasonable  
2 good faith efforts to resolve any disagreement concerning the designation of the  
3 Discovery Materials in question. Pending the Court's determination of any such  
4 application, the Discovery Materials shall continue to be treated in accordance with  
5 its "Confidential" designation pursuant to the terms of this Protective Order. The  
6 lapse of time between the designation of Discovery Materials as "Confidential" and  
7 any challenge to such designation shall not be deemed or argued to waive  
8 Applicant's right to challenge the designation.  
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10 7. Confidential Discovery Materials shall be maintained in a secure manner. Unless  
11 Respondent agrees otherwise, Confidential Discovery Materials may be disclosed  
12 only to:

- 13 a. the attorneys for Applicant and such attorneys' inside and outside support  
14 personnel who Applicant's attorneys deem necessary to assist them in this  
15 Action, the English Action, or the Idol Deposition;  
16  
17 b. Applicant, to the extent deemed necessary by the Applicant's attorneys for  
18 purposes of assisting them in this Action, the English Action, or the Idol  
19 Deposition;  
20  
21 c. any witness who counsel for Applicant in good faith believes may be called  
22 to testify in the English Action;  
23  
24 d. professional court reporters engaged to transcribe, and professional  
25 videographers engaged to videotape, Respondent's deposition and the Idol  
26 Deposition;  
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- e. independent outside consultants, translators, or experts retained by Applicant's attorneys, to the extent deemed necessary by Applicant's attorneys for purposes of litigation of the English Action;
  - f. John Idol, and his counsel, in connection with the Idol Deposition;
  - g. parties in the English Action other than Applicant, subject to applicable English law and Paragraph 10 herein; and
  - h. the Court hearing this Action (including the Court having jurisdiction of any appeal), Court personnel (including court reporters), the court hearing the English Action (including the court having jurisdiction of any appeal), and any personnel (including court reporters) working for the court hearing the English Action.
8. Other than those identified in Paragraph 7(h) above, each person to whom Confidential Discovery Materials are disclosed shall be informed of the terms of this Protective Order. No person referred to in Paragraphs 7(a) through (f) shall be given access to Confidential Discovery Materials until that person has certified that he/she has read this Protective Order and has manifested his/her assent to be bound thereby by signing a copy of the Assurance of Compliance attached hereto as Exhibit A, which shall thereafter be held in escrow by Applicant's counsel, provided that persons referred to in Paragraphs 7(c) and (f) who have declined to sign the Assurance of Compliance attached hereto as Exhibit A may still be shown Confidential Discovery Materials in depositions or court proceedings, but may not retain or be given any other access to Confidential Discovery Materials. Once a person has executed such an Assurance of Compliance, it shall not be necessary for

1 that person to sign a separate Assurance of Compliance each time that person is  
2 subsequently given access to Confidential Discovery Materials. Counsel or persons  
3 in a managerial position shall take appropriate steps to ensure that persons identified  
4 in Paragraph 7 within their supervision or control will maintain Confidential  
5 Discovery Materials strictly in accordance with the terms of this Protective Order.

6  
7 9. Unless Respondent agrees in writing to a longer timeframe, all persons referred to in  
8 Paragraphs 7(b) through (f) who have been given access to Confidential Discovery  
9 Materials must return or destroy such Confidential Discovery Materials within five  
10 (5) business days after its use in (i) this Action, (ii) the English Action, and/or (iii)  
11 the Idol Deposition.

12 10. Prior to disclosing Confidential Discovery Material to the persons referred to in  
13 Paragraph 7(g), Applicants shall request that such persons read this Protective Order  
14 and sign Exhibit A hereto prior to receiving Confidential Discovery Material. In the  
15 event any such person declines such request, Applicant shall (a) give Respondent at  
16 least five (5) business days' prior written notice of the Confidential Discovery  
17 Materials it intends to disclose and the intended recipient of the disclosure, and (b)  
18 not oppose any effort by Respondent to limit use or disclosure of Confidential  
19 Discovery Materials to the English Action. If any party in the English Action reads  
20 Confidential Discovery Material to the court or Confidential Discovery Material is  
21 read by the court, or referred to, at a hearing which has been held in public,  
22 Applicant shall (i) provide notice of the disclosure to Respondent's counsel within  
23 five (5) days of the disclosure; and (ii) not oppose any effort by Respondent to  
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1 obtain an order prohibiting use of the Confidential Discovery Materials for any  
2 purpose other than the English Action.

3 11. Nothing contained in this Protective Order shall restrict or prevent Respondent from  
4 using or otherwise disclosing its own Discovery Materials in whatever way it sees  
5 fit, and such use or disclosure will not be governed by this Protective Order.

6 12. Pursuant to Rule 502 of the Federal Rules of Evidence, if Respondent inadvertently  
7 discloses Discovery Materials it believes to be subject to a claim of attorney-client  
8 privilege or work product immunity, Respondent may give written notice of such  
9 disclosure and request that the Receiving Parties return the Discovery Materials.  
10 Upon receipt of such notice, the Receiving Parties shall immediately return to  
11 Respondent any inadvertently disclosed Discovery Materials, including all copies,  
12 and shall destroy any notes related to the inadvertently disclosed Discovery  
13 Materials. Return of the document shall not constitute an admission or concession,  
14 or permit any inference, that the returned Discovery Materials are, in fact, properly  
15 subject to a claim of attorney-client privilege or work product immunity, nor shall it  
16 foreclose Applicant from moving the Court for an order that such Discovery  
17 Materials should be producible for reasons other than a waiver caused by the  
18 inadvertent production.  
19

20 13. Nothing contained in this Protective Order shall affect the right of Respondent to  
21 make any objection, claim any privilege, or otherwise contest any request for  
22 production of documents or question at a deposition or to seek further relief or  
23 protective orders from the Court. Nothing in this Protective Order shall constitute  
24 an admission or waiver of any claim or defense by any Party.  
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1 14. All Receiving Parties shall follow the Federal Rules of Civil Procedure and the  
2 applicable Local and Electronic Case Filing rules when filing Confidential  
3 Discovery Materials in this Court. Filings in this Court of Confidential Discovery  
4 Materials, or of papers reflecting the contents of Confidential Discovery Materials,  
5 shall be made under seal. Filings in the English Action of Confidential Discovery  
6 Materials, or of papers reflecting the contents of Confidential Discovery Materials,  
7 shall be made in accordance with applicable English law. All Receiving Parties  
8 shall use reasonable best efforts to ensure that the confidentiality of the Confidential  
9 Discovery Materials is maintained.  
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11 15. If any Receiving Party receives a subpoena or document request from a third party  
12 which purports to require its production of Respondent's Discovery Materials, such  
13 Receiving party shall (a) notify Respondent within five (5) business days of the  
14 receipt of said subpoena or document request; (b) object to the production of  
15 documents, absent consent of Respondent to production, to the extent permitted by  
16 applicable law; and (c) fully cooperate with any effort by Respondent to limit  
17 discovery of such material.  
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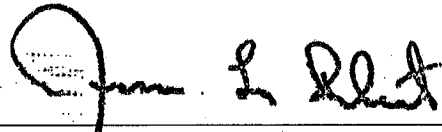
19 16. Within thirty (30) days of the conclusion of the English Action, the Receiving  
20 Parties shall (i) destroy all Discovery Materials, all copies thereof, and all  
21 summaries or other materials containing or disclosing information from the  
22 Discovery Materials, and (ii) furnish Respondent's attorneys written certification  
23 that the destruction is complete; provided, however, that outside counsel for the  
24 Receiving Parties may retain one complete and unredacted set of pleadings and  
25 papers filed or served in the English Action, trial transcripts and exhibits in the  
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English Action, and the transcript and exhibits of Respondent's deposition and the Idol Deposition. This Protective Order shall continue to be binding after the conclusion of the English Action.

17. The provisions of this Protective Order may be modified at any time by written and signed stipulation of both Applicant and Respondent as approved by Order of the Court.

**IT IS SO ORDERED.**

Dated at Seattle, Washington this 17<sup>th</sup> day of May, 2019



Hon. James L. Robart  
United States District Judge

STIPULATED BY:

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EXHIBIT A

ASSURANCE OF COMPLIANCE

I, \_\_\_\_\_, under penalty of perjury under the laws of the United States of America, declare and state as follows:

I reside at \_\_\_\_\_, in the City/County of \_\_\_\_\_ and State/Country of \_\_\_\_\_;

I have read the annexed Stipulated Protective Order, ("Protective Order"), dated \_\_\_\_\_ in the matter entitled: IN THE MATTER OF THE PETITION OF PJSC URALKALI FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO CONDUCT DISCOVERY FOR USE IN A FOREIGN PROCEEDING, Case No. 2:18-CV-001673 JLR, which currently is pending in the United States District Court for the Western District of Washington;

I am fully familiar with and agree to comply with and be bound by the provisions of that Protective Order;

I will not divulge, disclose, summarize, describe, characterize, or otherwise communicate the contents of any Confidential Discovery Materials to persons other than those specifically authorized by the Protective Order, and will not copy or use any Discovery Materials, except as permitted by the Protective Order; and

I consent to the jurisdiction of the United States District Court for the Western District of Washington with respect to any matter relating to the Protective Order, including enforcing the Protective Order, enjoining any violation or threatened violation of the Protective Order, or seeking damages for the breach of the Protective Order.

DATED: \_\_\_\_\_